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FILED

Board of Vocational Nursing
and Psychiatric Technicians

8 **BEFORE THE**
9 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Petition to Revoke
12 Probation Against:

Case No. VN-2003-2218

13 TANYA MARIE CREAL, AKA
14 TANYA MARIE MUSGRAY, AKA
15 TANYA MARIE LEWIS
69 Terry Lane
Suisun, CA 94585
Vocational Nurse License No. VN 90115

PETITION TO REVOKE PROBATION

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this Petition to
21 Revoke Probation solely in her official capacity as the Executive Officer of the Board of
22 Vocational Nursing and Psychiatric Technicians ("Board"), Department of Consumer Affairs.

23 **Vocational Nurse License**

24 2. On or about June 19, 1979, the Board issued Vocational Nurse License Number VN
25 90115 to Tanya Marie Creal, also known as Tanya Marie Musgray and Tanya Marie Lewis
26 ("Respondent"). The vocational nurse license was in full force and effect at all times relevant to
27 the charges brought herein and will expire on April 30, 2011, unless renewed.
28

1 **Prior Discipline**

2 3. In a disciplinary action entitled "In the Matter of the Accusation Against Tanya Marie
3 Creal, also known as Tanya Marie Musgray and Tanya Marie Lewis," Case No. VN-2003-2218,
4 the Board of Vocational Nursing and Psychiatric Technicians issued a Decision, in that effective
5 July 26, 2008, Respondent's Vocational Nurse License No. VN 90115 was revoked. However,
6 the revocation was stayed and Respondent's license was placed on probation for a period of three
7 (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and
8 is incorporated by reference.

9 **STATUTORY PROVISIONS**

10 4. Section 2875 of the Business and Professions Code ("Code") provides, in pertinent
11 part, that the Board may discipline the holder of a vocational nurse license for any reason
12 provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

13 5. Code section 118, subdivision (b) provides, in pertinent part, that the expiration of a
14 license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the
15 period within which the license may be renewed, restored, reissued or reinstated. Under Code
16 section 2892.1, the Board may renew an expired license at any time within four years after the
17 expiration.

18 6. Grounds exist for revoking the probation and reimposing the order of revocation of
19 Respondent's Vocational Nurse License No. VN 90115. Condition 10 of the Decision states:

20 If respondent violates probation in any respect, the Board may seek to
21 revoke probation and carry out the disciplinary order that was stayed. Respondent
22 shall receive prior notice and the opportunity to be heard. If an Accusation or Petition
23 to Vacate Stay is filed against respondent during probation, the Board shall have
24 continuing jurisdiction and the period of probation shall be extended until the matter
25 is final.

26 7. Respondent has violated the Probation Program, as more particularly set forth in the
27 following paragraphs:

28 ///

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FIRST CAUSE TO REVOKE PROBATION

(Failure to Obey all Laws)

8. At all times after the effective date of Respondent's probation, Condition 1, stated:

Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Further, respondent shall, within five (5) days of any arrest, submit to the Board in writing a full and detailed account of such arrest.

9. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 1, referenced above. The facts and circumstances regarding this violation are that Respondent failed to timely report to the Board, in writing, that she was arrested on or about November 29, 2008, within five (5) days of the date of the incident. Instead, Respondent informed the Board by telephone on or about December 3, 2008, and did not provide a written explanation until December 30, 2008.

SECOND CAUSE TO REVOKE PROBATION

(Failure to Submit Quarterly Reports)

10. At all times after the effective date of Respondent's probation, Condition 5, stated:

Respondent shall submit quarterly reports under penalty of perjury, in a form provided by the Board. The reports shall certify and document compliance with all the conditions of probation.

11. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 5, referenced above. The facts and circumstances regarding this violation are that Respondent failed to submit quarterly reports in a timely fashion for the following quarters:

<u>Reporting Period</u>	<u>Due Date</u>	<u>Date Received</u>	<u>Delinquent</u>
October-December 2008	January 7, 2009	January 8, 2009	(1 day late)
January-March 2009	April 7, 2009	April 8, 2009	(2 days late)
April-June 2009	July 7, 2009	July 15, 2009	(8 days late)
October-December 2009	January 7, 2010	January 14, 2010	(7 days late)
January-March 2010	April 7, 2010	April 10, 2010	(3 days late)

Further, Respondent failed to submit quarterly reports for the following quarters:

Reporting Period

Due Date

July-September 2009

October 7, 2009

April-June 2010

July 7, 2010

THIRD CAUSE TO REVOKE PROBATION

**(Failure to Participate in Rehabilitation Program and
Abstain from the Use of Alcohol)**

12. At all times after the effective date of Respondent's probation, Condition 11, stated:

Within thirty (30) days of the effective date of the Decision, respondent shall enter rehabilitation and monitoring program specified by the Board. Respondent shall successfully complete such treatment contract as may be recommended by the program and approved by the Board. Components of the treatment contract shall be relevant to the violation and to the respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: random bodily fluid testing, abstention from drugs and alcohol, use of work site monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations and other appropriate rehabilitation or monitoring programs. The cost for participation in this program shall be paid by respondent.

13. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 11, referenced above. The facts and circumstances regarding this violation are that after being notified to appear for bodily fluid testing, Respondent failed to appear for said testing on the following dates:

January 16, 2009; May 4, 2009; May 14, 2009; May 25, 2009; July 8, 2009; September 15, 2009; November 9, 2009; January 5, 2010; March 5, 2010; and, May 17, 2010.

As a result of this failure, Respondent was excluded from the bodily fluid testing program effective July 27, 2010.

On or about November 29, 2008, as a further violation of this condition, Respondent failed to abstain from the use of alcohol.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians issue a decision:

1. Revoking the probation that was granted by the Board of Vocational Nursing and Psychiatric Technicians in Case No. VN-2003-2218 and imposing the disciplinary order that was

1 stayed thereby revoking Vocational Nurse License No. 90115 issued to Tanya Marie Creal, also
2 known as Tanya Marie Musgray and Tanya Marie Lewis;

3 2. Revoking or suspending Vocational Nurse License Number VN 90115, issued to
4 Tanya Marie Creal, also known as Tanya Marie Musgray and Tanya Marie Lewis; and,

5 3. Taking such other and further action as deemed necessary and proper.
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7

8 DATED: February 28, 2011.



9 TERESA BELIO-JONES, J.D., M.S.N., R.N.
10 Executive Officer
11 Board of Vocational Nursing and Psychiatric Technicians
12 Department of Consumer Affairs
13 State of California
14 Complainant
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Exhibit A
Decision in the Matter of the Accusation Against Tanya Marie Creal
Case No. VN-2003-2218

BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. VN-2003-2218

TANYA MARIE CREAL,
a.k.a. TANYA MARIE MUSGRAY,
a.k.a. TANYA MARIE LEWIS
1201 Worely Road
Suisun City, California 94585

OAH No. 2007120494

Vocational Nurse License
No. VN 90115


Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the Final Decision in the above entitled matter.

This Decision shall become effective on July 26, 2008.

IT IS SO ORDERED this 26th day of June, 2008.


John P. Vertido, L.V.N.
President

BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

TANYA MARIE CREAL, a.k.a TANYA
MARIE MUSGRAY, a.k.a. TANYA MARIE
LEWIS,

Vocational Nurse License No. VN 90115

Respondent.

Case No. VN-2003-2218

OAH No. 2007120494

PROPOSED DECISION (CORRECTED)

Gary A. Geren, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on March 21, 2008, in Sacramento, California.

Arthur D. Taggart, Supervising Deputy Attorney General, represented Complainant.

Tanya Marie Creal-Caviness, respondent, represented herself.

The matter was submitted on March 21, 2008.

FACTUAL FINDINGS

License History

1. On June 19, 1979, the Board of Vocational Nursing and Psychiatric Technicians (the Board), issued Vocational Nurse License No. VN 90115 to Tanya Marie Creal, also known as, Tanya Marie Creal-Caviness, Tanya Marie Musgray and Tanya Marie Lewis. Respondent's license will expire on April 30, 2009, unless renewed.

Jurisdictional Matters

2. Complainant Teresa Bello-Jones (Complainant) made the accusation while acting in her official capacity as the Board's Executive Officer.

Respondent's Convictions

3. The Board seeks the revocation of respondent's license because of her criminal convictions, as set forth below:

On April 3, 1998, respondent was convicted on her plea of no contest of violating Health and Safety code section 11550, subdivision (a), being under the influence of a controlled substance, a stimulant, a misdemeanor.

Respondent was ordered to serve 60 days in the County jail. Respondent was allowed to serve her sentence by participating in a work detention facility and electronic monitoring. Respondent was ordered to pay fines and fees. Respondent was placed on summary probation for a period of three years.

The facts and circumstances that gave rise to respondent's conviction are that on March 14, 1998, the Suisun City Police Department responded to a call that a woman was behaving erratically and was possibly under the influence of drugs. The officers who responded to the scene noted respondent's irrational behavior was consistent with someone under the influence of a controlled substance. The officers asked respondent whether she had taken any drugs and respondent replied that she had "smoked crack cocaine."

4. On August 31, 2000, respondent was convicted on her pleas of guilty of violating Penal Code section 148, subdivision (a)(1), resisting arrest, a misdemeanor; two counts of Health and Safety Code sections 11550, subdivision (a), being under the influence of the controlled substance, methamphetamine; and two counts of section 11350, subdivision (a), possession of a controlled substance, cocaine, misdemeanors.

Respondent was sentenced to serve 365 days in prison. Respondent was ordered to serve 90 days in the County jail. She was ordered to pay fines, fees and restitution and was placed on informal probation for a period of two years.

The facts and circumstances that led to respondent's convictions are that during a five-week period from July 2, 1999 through September 7, 1999, respondent was arrested on four separate occasions for either being under the influence or possessing crack cocaine. During her last arrest in this series of arrests she physically resisted the arresting officers.

5. On November 1, 2000, respondent was convicted on her plea of guilty of violating Welfare and Institutions Code section 10980, subdivision (c)(2), welfare fraud, a felony.

Respondent was ordered to serve 60 days in the County jail. Respondent's sentence was stayed pending her participation in a drug rehabilitation program. Respondent was ordered to pay fines, fees and restitution. Respondent was placed on formal probation for a period of three years.

The facts and circumstances that gave rise to respondent's conviction are that between December 1, 1995 and July 31, 1996, respondent wrongfully obtained \$3102 in welfare assistance. Respondent made false representations in her monthly eligibility reports stating that she did not have income from other sources, when in fact she did.

6. On September 25, 2001, respondent was convicted on her plea of guilty of violating Health and Safety Code section 11550, subdivision (a), being under the influence of controlled substances, methamphetamine and cocaine, a misdemeanor.

Respondent was sentenced to 90 days in prison, with credit for 90 days served. Respondent was ordered to pay fines, fees and restitution.

The facts and circumstances that gave rise to respondent's conviction are that on July 18, 2000, respondent was arrested for being under the influence of methamphetamine and cocaine.

7. On April 24, 2002, respondent was convicted on her plea of nolo contendere of violating Health and Safety Code section 11350, subdivision (a), possession of a controlled substance, cocaine base, a felony.

Respondent was ordered to participate in a drug diversion program pursuant to Penal Code section 1210.1. Respondent was ordered to pay fines, fees and restitution, and was placed on formal probation for a period of three years.

The facts and circumstances that gave rise to respondent's conviction are that on April 12, 2002, respondent was arrested for being in the possession of cocaine base.

8. On November 19, 2004, respondent was convicted on her plea of nolo contendere of violating Penal Code section 148, subdivision (a)(1), resisting arrest, a misdemeanor.

Respondent was ordered to pay fines, fees and restitution. She was placed on summary probation for a period of three years.

The facts and circumstances that gave rise to respondent's conviction are that on April 20, 2004, respondent was driving a motor vehicle when she was stopped by the Fairfield Police Department. The officers believe that respondent was under the influence of a controlled substance and they arrested her. During the course of respondent's arrest she became combative with the officers and she was charged with resisting arrest. Respondent was also charged with driving under the influence; however, a blood test established that there were no intoxicants in respondent's system. The driving under the influence count was dismissed.

Matters in Aggravation

9. Respondent used illegal drugs for the majority of her adult life. She began smoking marijuana in high school in, testifying that after graduating in 1975, she “smoked a lot of weed.” From 1973 through 1993, respondent smoked marijuana on a nearly daily basis. Respondent stop smoking marijuana and she began using cocaine. Initially, respondent “snorted” cocaine, but later began smoking crack cocaine.

Respondent’s multiple convictions for resisting arrest shows a disregard for the authority held by peace officers. Her conviction for welfare fraud involved dishonesty and her commission of the crime showed a pattern of unlawful activity.

Respondent repeatedly violated the terms of her probations. Respondent is scheduled to remain on probation until June 2008.

Matters in Mitigation

10. Respondent became addicted to crack cocaine following the death of her mother in 1994, and her father in 1996. Respondent’s has one sibling, a brother from whom she has been estranged. Because of the loneliness she felt after her parent’s passing, she began to “self medicate” by using cocaine. By the end of 1996, respondent was addicted to crack cocaine. In 1998, respondent successfully stopped using cocaine; however, she started again in 1999. Respondent described her second round of cocaine addiction as being “worse” than the first.

With the exception of the conviction that occurred in 2004, each of respondent’s convictions was related to her drug addiction, by her either being under the influence of or in possession of illegal drugs. Her first resisting arrest conviction occurred while she was under the influence. Her welfare fraud conviction was a consequence of her gaining money to support her addiction that cost \$100 per day. Four of respondent’s ten convictions occurred in a two-month period from July to September 1999. Another four of her convictions occurred between August 2000 and April 2002. During these times respondent was in the deepest throes of her addiction.

Disciplinary Factors Considered

11. *Nature and severity of the acts, offenses, and crimes under consideration.* Because of respondent’s training and experience as a nurse, she knew the harm that illicit drug usage causes to the users, but also to family members and friends, as well as to society in general.

Licensed vocational nurses are expected to carry forth orders issued by doctors and supervisors. Respondent’s convictions for resisting arrest stand inapposite to the respect for authority that the Board expects from licensed vocational nurses.

Respondent's conviction for welfare fraud showed dishonesty, a character trait inconsistent with the expectations and duties of a licensed vocational nurse.

Actual or potential harm to the public

Respondent has held her license for approximately 29 years. There is no evidence that respondent ever harmed a patient.

Respondent testified that she never reported for nurse's duty while under the influence, which is supported by the fact that she was never disciplined by any of her employers.

Respondent's threat of potential harm to her patients is directly related to her ability to maintain her sobriety. In that regard, substantial evidence was offered by respondent in the form of a letter drafted by George Demetrius Karalis, M.D., M.P.H., a specialist in psychiatry, stress control, psychosomatic medicine and pain disorders. The letter is dated March 4, 2008, and is directed to the Board. It reads:

This patient [respondent] appears to have controlled her drug abuses (see 2-28-08 Healthy Partnerships certificate) and appears to me to be able to function as a LVN. Her licensure should be continued.

Respondent also submitted a letter from Laura Kelly, Director of Operations and Compliance, Healthy Partnerships, Inc. It reads:

[Respondent] attended Healthy Partnerships under Proposition 36 funding. [Respondent] was admitted on July 3, 2002. She graduated the Proposition 36 intensive level treatment program on January 6, 2003.

While [respondent] attended Healthy Partnerships, all her urine analysis tests were negative. [Respondent] gained knowledge about addiction, relapse and the recovery process. She was an active client while attending Healthy Partnerships and a joy to have around.

Respondent has not consumed non-prescribed controlled substances since her arrest on April 24, 2002, nearly 6 years ago.

Respondent submitted letters attesting to her skill and dedication to nursing. A letter dated March 2, 2008, from Ms. Lillie Germany, a licensed vocational nurse, reads:

I have known [respondent] for approximately 15 years. We have worked together as LVN's at the Fairfield Nursing Rehab Center. [Respondent] has been an outstanding nurse, who was loved by all her patients and their families. Because of her demeanor she was highly respected by all of her coworkers and staff. There was never a duty

that she could not accomplish. While she was working there she taught the CNA's. Also, I believe her to be an honest person, who loves God and his people. Despite [respondent's] trial and tribulation in her past I still believe she is a hard worker in a great friend. Please let me know if I can be any further assistance to you.

Respondent submitted a letter dated March 1, 2008, from Quanita Overton, which reads:

My name is Quanita Overton; I am the owner of Service First Nursing Registry. I am writing a letter on the behalf of [respondent]. [Respondent] has worked for my registry since 1998 as a LVN. She has shown outstanding nursing skills on every job assignment. One assignment, at Vacaville Rehab. requested for [respondent] to work on schedule for two years due to her professional nursing skills.

I am well aware of [respondent's] drug addiction in 2000 through 2002, as her employer I continue to support [respondent] to the best of my ability. As of January 2002, [respondent] return to work for me and I am able to testify for her drug rehab progress and recovery service in 2002. She is an inspiration to me as well as others. [Respondent] is currently employed with my company and will be as long as she desires. It is my intention with this letter to impress upon the Board of Nurses to allow [respondent] to continue to work as a LVN. As you know, it is difficult to find a good nurse at this time and I am willing to support [respondent] in whatever she may need.

[Respondent] works an average of 20-40 hours per week. She is definitely an asset to my company.

Respondent submitted a letter dated March 3, 2008, from Ms. Simone Jackson, Certified Nursing Assistant, which reads:

I have known [respondent] for seven years and have found her to be an outstanding nurse in my opinion. She has always been a friend, teacher, and mentor to me. We have worked together at Windsor House Convalescent hospital in the city of Vacaville. Her patient care is amazing; some of her patients call her their angel, because she was always there for them when they are in a crisis or when they just need a shoulder to cry on or a person to talk to. Patient care is her strong point. I believe her to be a strong Christian woman by the way she acts and carries herself.

Respondent presented as an articulate witness who testified with a manner, demeanor and attitude appropriate for the circumstances. For example, respondent did not try to diminish the significance of her convictions (other than her last one for resisting arrest that she contends involved a violation of her civil rights and for which she is pursuing a civil action), or make light of her drug addiction. Respondent answered questions put to her in a direct and forthright manner. Through her participation in drug diversion and support

programs, such as Healthy Partnerships and Narcotics Anonymous, respondent has gained significant insight into her addiction, and has shown that she has been successful in her recovery. Respondent is presently 51 years old and enjoys being “clean and sober.” Respondent recognizes that many people who have drug addictions “end up dead or in prison.” Respondent now makes choices that enable her to live a productive life.

Respondent has a “system of support” in place that encourages her sobriety. Respondent’s support includes her family, her faith, her career and her education. Respondent believes that by struggling through her addiction she has become both a “better person and better nurse.” Respondent feels that her struggles have led her to be more sympathetic towards her patients’ emotional needs. Respondent has a “passion for nursing” and her recovery, in part, has been motivated by her desire to continue with her career.

Respondent fully appreciates that her criminal convictions and drug usage have placed her license in serious jeopardy, and she is now dedicated to living a law-abiding life in order to retain it. Respondent accepts that because of her crimes and addiction some measure of discipline taken against her license is warranted, and she would not oppose holding her license under probationary terms and conditions.

Prior disciplinary record, warnings or remediation

The Board has not taken any prior discipline against respondent’s license.

Number and/or variety of current violations.

As previously set forth, respondent’s violations are numerous, yet largely unvaried. Except for her last conviction (that stemmed from her being arrested for driving under the influence, when her blood test showed that she was not) her convictions may be traced to her drug addiction, which she has been able to control for the last six years.

Rehabilitation Evidence

Respondent now enjoys a stable family life. Respondent is married to Claude Alfonzo Caviness. Mr. Caviness met respondent twelve years ago when she was still using drugs. He visited respondent in jail on approximately nine separate occasions; he has helped respondent’s recovery by providing moral support and encouragement. Mr. Caviness served as an enlisted man in the Air Force for 21 years and as a civilian in both the United States Army and Navy for an additional 19 years. In his 40 years of military service, he came to know many people who had become addicted to drugs or alcohol, but who could not overcome their addictions. He considers his wife’s recovery to be “miraculous.”

Mr. Caviness is a deacon in the church that he and respondent attend. They are active in numerous church activities, for example, respondent serves as a member of the church’s “nurse staff.”

James Jethro Ware testified as a self-described "character witness" on respondent's behalf. Mr. Ware is 85 years old and testified in a manner commensurate with the wisdom one would expect from a thoughtful man of his age. Mr. Ware has known respondent since 2003, and has routinely engaged in social activities with respondent and her husband. He described her as a "very lovable person." Mr. Ware has never observed respondent to be intoxicated. Based on his observations, he supports her effort to retain her license, concluding "it would be right for everybody," respondent could continue her good work as a nurse, and her patients would benefit from her receiving care.

Kanika Amons, the mother of respondent's grandchildren, testified that she has known respondent for approximately ten years. Ms. Amons has watched respondent's recovery and attested to her success over the last six years. Respondent helps Ms. Amons to raise her children and to keep her "organized." Respondent used her experience as vocational nurse to help Ms. Amons complete an internship at a doctor's office.

Respondent's daughter, Faith Musgray, testified that after her mother's recovery, she helped Ms. Musgray to graduate from high school by providing guidance and encouragement towards her completing her education. Ms. Musgray now attends college at Texas Southern University where she is studying Biology. She someday hopes to be a pediatrician and credits her mom's recovery as a source of inspiration to her for how to overcome difficult challenges. Ms. Musgray considers her mother to be a "role model" and wants to follow her path to a career in the medical field.

Amber Amos is a friend of the respondent who has known her for two years. Ms. Amos is 19 years old, she also considers respondent to be a "role model." Ms. Amos's parents and brothers suffer from drug addictions. Ms. Amos did not believe "anyone could recover," from addiction until she met respondent. Respondent's recovery provides Ms. Amos with hope that members of her family may someday recover.

Respondent is currently enrolled full-time in the University of Phoenix; she expects to graduate in January 2009 with a Bachelor of Science degree in Business Management. Respondent has completed eight courses and has a Grade Point Average of 3.67. Respondent's college transcript shows that she recently obtained "A" grades in the following courses: Skills for Professional Development; Computers Information Processing; Business Law; Management: Theory, Practice and Application; and Critical Thinking: Strategies in Decision-Making."

In September 2002, respondent completed a 24-hour training program titled, "Planning, Implementing and Evaluating Educational Programs in Nursing." The program was taught by a provider approved by the Board.

Respondent currently works at the Orinda Nursing Center, as a charge nurse. Respondent has worked at that facility since February 2007. As a charge nurse she performs various tasks that directly affect the Center's patients' well-being, for example she monitors patients' vital signs, their fluid "input/output" sheets, oversees the administration of their

drug orders and tracks their oxygen saturation rates. Respondent has been entrusted to carry out important duties, such as stocking the drugs delivered to the Center, as well as monitoring the dispensing of medication to patients. There is no evidence that respondent failed to perform any of her duties in less than a professional manner, or that she engaged in any improprieties while working for the Center, including her accounting for drugs. Respondent described the Center as a private pay facility that is a “very nice place” and that hires only the best nurses. Respondent is proud of her affiliation with the Center and she is committed to refrain from conduct that might jeopardize her continued employment there.

Compliance with probation

Respondent has abided by the conditions of her latest probation. Respondent submitted court documents to establish that she completed the terms of her April 24, 2002 probation by completing the court ordered drug treatment program.

Respondent has paid all but \$700 of the \$3000 restitution order that followed her welfare fraud conviction. Respondent makes regular payments of \$50 per month.

Overall criminal record

Respondent suffered ten convictions, but over a relatively brief period of time during her struggle with a serious drug addiction. While her criminal record is significant, none her crimes arose from her work as a licensed vocational nurse.

Time that has passed since offenses occurred

Respondent’s drug related offenses were committed between six and ten years ago. Her last offense, resisting arrest, occurred four years ago. Without diminishing the seriousness of that conviction, it is noted that respondent was arrested for being under the influence, when in fact her blood tests established that she was not, and ultimately the driving while intoxicated charge was dismissed.

Expungement

Respondent’s conviction of April 24, 2002, was dismissed pursuant to Penal Code section 1210.1, subdivision (d), on August 8, 2003.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2878 provides that the Board may revoke a license of a vocational nurse for, among other things, unprofessional conduct, conviction of crime substantially related to the qualifications, functions and duties of a vocational nurse, and the commission of any act involving dishonesty, if that act is related to the duties and functions of a vocational nurse.

2. Business and Professions Code section 2878.5 defines unprofessional conduct to include the unlawful taking of a controlled substance as defined by Division 10 of the Health and Safety Code or using any dangerous drug as described in Business and Professions Code section 4022. Section 2878.5 also defines unprofessional conduct to include the conviction of a criminal offense involving the possession of dangerous drugs or the self-administration of dangerous drugs or controlled substances.

3. California Code of Regulations, title 25, section 2521 sets forth that a conviction for a crime is deemed by the Board to bear a substantial relationship to the qualifications, functions or duties of a licensed vocational nurse if, among other things, the conviction is for a crime involving "fiscal dishonesty" or the administration of "narcotics or dangerous drugs."

4. As set forth in Factual Findings 3, 4, 6, and 7, and Legal Conclusions 1 through 3, legal cause exists for the Board to take disciplinary action against respondent's license. Her drug related convictions stem from crimes that involved unprofessional conduct and convictions that are substantially related to the qualifications, functions and duties of a licensed vocational nurse. Licensed vocational nurses are expected to be entrusted with the safe keeping of prescription drugs. Convictions for possessing or being under the influence of controlled substances or dangerous drugs cast significant doubt about a licensee's trustworthiness to fulfill this obligation in an unwavering fashion.

5. As set forth in Factual Findings 4 and 8, and Legal Conclusions 1 through 3, legal cause exists for the Board to take disciplinary action against respondent's license. Her convictions for resisting arrest stem from crimes substantially related to the qualifications, functions and duties of a licensed vocational nurse. Licensed vocational nurses are required to respect and comply with a number of authorities including but not limited to immediate superiors; supervising superiors, law enforcement officials, and regulatory officials. On two occasions, respondent refused to comply with the orders of police officers and resisted arrest by them. Such resistance to and defiance of authority, in the context of respondent's professional setting, could be extremely deleterious to the patients in her charge and thus constitutes a potential unfitness to perform the functions authorized by respondent's license.

6. California Code of Regulations, title 25, section 2521.5, provides that when considering the suspension or revocation of a license when a licensee has been convicted of a crime, the Board shall consider evidence of rehabilitation, including: the nature and severity of the acts or offenses committed by the licensee; the total criminal record; the time that has elapsed since the commission of the acts or offenses; whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee; any evidence of expungement of the convictions; and evidence of rehabilitation.

7. California Code of Regulations, title 25, section 2524, provides that the Board shall consider its "Disciplinary Guidelines" when reaching a decision on a disciplinary action brought under the Administrative Procedure Act (Government Code section 11400 et seq.).

Deviation from the guidelines is appropriate as the facts of the particular case warrant, but the Board requests that any deviation be explained by the administrative law judge.

8. The Introduction to the Board's "Disciplinary Guidelines" states the following:

To facilitate uniformity of penalties and to ensure that its disciplinary policies are known, the Board of Vocational Nursing and Psychiatric Technicians establishes the use Disciplinary Guidelines. While recognizing the concept that administrative law judges must be free to exercise their discretion in such cases, the Board requests these guidelines be followed to the extent possible and that any departures there from be noted and explained in the Proposed Decision.

The Board requests that matters in extenuation and in mitigation, as well as those in aggravation, be fully considered and noted in the Proposed Decision. Of primary importance is the effect that respondent's conduct had or can have on the health, safety and welfare of California consumers.

9. Essentially, the Board's request for revocation of respondent's license is based on the assumption that respondent's criminal record establishes that she poses a potential harm to her patients, and that because of her multiple convictions she does not deserve to hold even a probationary license.

While respondent's criminal convictions pose legitimate concerns about her fitness to safely perform the qualifications, functions and duties of a vocational nurse, when balancing the evidence against the Board's "Disciplinary Guidelines," allowing respondent to hold her licensure on a probationary basis, subject to appropriate terms and conditions to assist the Board to verify her abstinence from non-prescribed controlled substances and dangerous drugs, would result in a reasonable measure of discipline. Such terms and conditions reasonably insure the "primary importance" of protecting "the health, safety and welfare of California consumers" by conditioning respondent's ability to practice on her abstaining from illegal drug use.

Respondent's lawful behavior before the onset of her cocaine addiction, as well as after her successful rehabilitation that she has been able to sustain for approximately six years, is a more reliable predictor of respondent's present and future ability to meet her professional obligations, than is her behavior when her addiction was at its nadir. Also, the fact that respondent has never harmed a patient in 29 years of vocational nursing, even while suffering through the throes of her addiction, provides a reasonable inference that she is unlikely to injure a patient in the future.

The terms and conditions of respondent's probation should not be so onerous so as to prevent respondent from continuing to engage in the family, church, educational and work activities that aid her in maintaining her sobriety.

As set forth in Factual Findings 9 through 11, and Legal Conclusions 8 and 9, respondent should be allowed to hold a probationary license; the Board's outright revocation of respondent's license is unwarranted at this time.

11. Business and Professions Code, section 125.3, provides that the Board may request the administrative law judge to direct a licensee found to have committed a violation of the Act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

Zuckerman v. State Board of Chiropractic Examiners (2002) 29 Cal.4th 32, set forth four factors required to be considered when deciding whether to reduce or eliminate costs: (1) Whether the licentiate used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the licentiate had a "subjective" good faith belief in the merits of his position; (3) whether the licentiate raised a "colorable challenge" to the proposed discipline; and (4) whether the licentiate had the financial ability to make payments. Respondent produced evidence to support factors one through three. (Factual Findings 9 through 11). The Board did not establish factor four.

12. As set forth in Legal Conclusion 9, respondent used the hearing process to advance meritorious positions and produced persuasive evidence regarding mitigation and rehabilitation, as well as support for the imposition of a measure of discipline less than the outright revocation of her license as was sought by the Board. Accordingly, in light of the considerations discussed in *Zuckerman*, respondent should not bear the Board's costs.

ORDER

Vocational Nurse License No. VN 90115 issued to respondent Tanya Marie Creal is revoked. However, the revocation is stayed and respondent's license is placed on probation for a period of three years upon the following terms and conditions:

1. Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Further, respondent shall, within five (5) days of any arrest, submit to the Board in writing a full and detailed account of such arrest.

2. Respondent shall fully comply with the probation program established by the Board and shall cooperate with the representatives of the Board.

3. Respondent, within five (5) days of a change of residence or mailing address shall notify the Board's Enforcement Unit in writing of the new address.

4. Respondent is required to notify the Board immediately in writing if she leaves California to reside or practice in another state. Respondent shall notify the Board immediately upon return to California. The period of probation shall not run during the time respondent is residing or practicing outside California.

5. Respondent shall submit quarterly reports under penalty of perjury, in a form required by the Board. The reports shall certify and document compliance with all the conditions of probation.

6. When currently employed or applying for employment in any capacity in any health care profession, respondent shall notify her employer of the probationary status of respondent's license. This notification to the respondent's current health care employer shall occur no later than the effective date of the Decision. Respondent shall notify any prospective health care employer of her probationary status with the Board prior to accepting such employment. This notification shall be by providing the employer or prospective employer with a copy of the Board's Accusation and disciplinary order. The Health Care Professions include, but are not limited to: Licensed Vocational Nurse, Registered Nurse, Medical Technical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant and Home Health Aide. Respondent shall cause each health care employer to submit quarterly reports to the Board. The reports shall be on a form provided by the Board, shall include a performance evaluation and such other information as may be required by the Board. Respondent shall inform the Board of any change in employment status, in writing, within ten (10) days of such change.

7. Respondent shall appear in person for interviews with the Board, or its designee, upon request at various intervals and with reasonable notice. An initial probation visit will be required within sixty (60) days of the effective date of the Decision. The purpose is to introduce respondent to the Board's representative(s) and to familiarize respondent with specific probation conditions and requirements. Additional meetings will be scheduled as required.

8. While on probation, respondent may not work as a faculty member in an accredited or approved school of nursing or as an instructor in a Board approved continuing education course.

9. Respondent shall, at all times while on probation, maintain an active current license with the Board, including any period during which suspension or probation is tolled. Should respondent's license, by operation of law or otherwise, expire, upon renewal or reinstatement respondent's license shall be subject to any and all terms of this probation not previously satisfied.

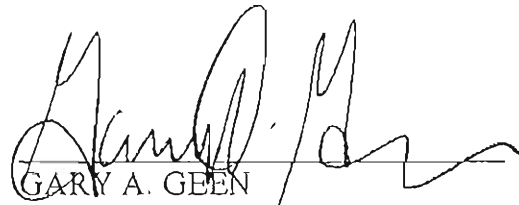
10. If respondent violates probation in any respect the Board may seek to revoke probation and carry out the disciplinary order that was stayed. Respondent shall receive prior notice and the opportunity to be heard. If an Accusation or Petition to Vacate Stay is filed against respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final.

11. Within thirty (30) days of the effective date of the Decision, respondent shall enter rehabilitation and monitoring program specified by the Board. Respondent shall successfully complete such treatment contract as may be recommended by the program and

approved by the Board. Components of the treatment contract shall be relevant to the violation and to the respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: random bodily fluid testing, abstention from drugs and alcohol, use of work site monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations and other appropriate rehabilitation or monitoring programs. The cost for participation in this program shall be paid by respondent.

12. Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

DATED: April 18, 2008

A handwritten signature in black ink, appearing to read "Gary A. Geen", is written over a horizontal line.

GARY A. GEEN
Administrative Law Judge
Office of Administrative Hearings

Exhibit A

Accusation

Board of Vocational Nursing and Psychiatric Technicians Case No. VN-2003-2218

FILED

NOV 06 2007

**Board of Vocational Nursing
and Psychiatric Technicians**

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6 Telephone: (916) 324-5339
Facsimile: (916) 327-8643
7
8 Attorneys for Complainant

9 **BEFORE THE**
10 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. VN-2003-2218

13 **TANYA MARIE CREAL**
a.k.a. **TANYA MARIE MUSGRAY**
14 a.k.a. **TANYA MARIE LEWIS**
1201 Worely Road
15 Suisun City, California 94585

A C C U S A T I O N

16 Vocational Nurse License No. VN 90115

17 Respondent.

18
19 Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") alleges:

20 **PARTIES**

21 1. Complainant brings this Accusation solely in her official capacity as the
22 Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians ("Board"),
23 Department of Consumer Affairs.

24 2. On or about June 19, 1979, the Board issued Vocational Nurse License
25 Number VN 90115 to Tanya Marie Creal, also known as Tanya Marie Musgray and Tanya Marie
26 Lewis ("Respondent"). The license will expire on April 30, 2009, unless renewed.

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1 (c) Be convicted of a criminal offense involving possession of any narcotic or
2 dangerous drug, or the prescription, consumption, or self-administration of any of the substances
3 described in subdivisions (a) and (b) of this section, in which event the record of the conviction is
4 conclusive evidence thereof."

5 COST RECOVERY

6 7. Code section 125.3 provides, in pertinent part, that the Board may request
7 the administrative law judge to direct a licensee found to have committed a violation or
8 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
9 and enforcement of the case.

10 DRUGS

11 8. "Methamphetamine" is a Schedule II controlled substance as designated by
12 Health and Safety Code section 11055(d)(2).

13 9. "Cocaine" is a Schedule II controlled substance as designated by Health
14 and Safety Code section 11055(b)(6).

15 FIRST CAUSE FOR DISCIPLINE

16 (Conviction of a Crime)

17 10. Respondent is subject to discipline under Code section 2878(f), in that she
18 was convicted of the following crimes that are substantially related to the qualifications,
19 functions or duties of a licensed vocational nurse:

20 a. On or about November 19, 2004, in the case of *People v. Tanya Marie*
21 *Creal, also known as Tanya Marie Musgray, Tany Marie Creal, Tanya Marie Ceral, Tanya*
22 *Lewis, Tanya Musgraycreal*, (Super. Ct. Solano County, 2004, Case No. FCR215295),
23 Respondent was convicted by the Court on her plea of nolo contendere of violating Penal Code
24 section 148(a)(1) (resist, obstruct, delay of peace officer or EMT).

25 b. On or about April 24, 2002, in the case of *People v. Tanya Marie Creal,*
26 *also known as Tanya Marie Musgray, Tanya Marie Lewis, Tanya Marie Ceral*, (Super. Ct.
27 Solano County, 2002, Case No. FCR198891), Respondent was convicted by the Court on her

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1 plea of nolo contendere of violating Health and Safety Code section 11350(a) (possession of a
2 controlled substance, to wit: Cocaine base). The circumstances of the crime are that on or about
3 April 12, 2002, Respondent unlawfully possessed Cocaine.

4 c. On or about September 25, 2001, in the case of *People v. Tanya Marie*
5 *Creal*, (Super. Ct. Contra Costa County, 2001, Case No. 04-123254-5), Respondent was
6 convicted by the Court on her plea of guilty of violating Health and Safety Code section 11550(a)
7 (under the influence of controlled substances, to wit: Methamphetamine and Cocaine). The
8 circumstances of the crime are that on or about July 18, 2000, Respondent unlawfully used and
9 was under the influence of Methamphetamine and Cocaine.

10 d. On or about November 1, 2000, in the case of *People v. Tanya Marie*
11 *Creal*, (Super. Ct. Solano County, 2000, Case No. FCR183345), Respondent was convicted by
12 the Court on her plea of guilty of violating Welfare and Institutions Code section 10980(c)(2)
13 (aid by misrepresentation - over \$400). The circumstances of the crime were that between
14 December 1, 1995, and July 31, 1996, Respondent did unlawfully and by means of false
15 statements, representations, impersonation or other fraudulent device, obtain and retain aid, not
16 in fact entitled thereof, in excess of Four Hundred Dollars (\$400), to wit: \$3,102.00.

17 e. On or about August 31, 2000, in the case of *People v. Tanya Marie Creal*,
18 (Super. Ct. Contra Costa County), Respondent was convicted by the Court on her pleas of guilty
19 to crimes, as follows:

20 Case No. 04-118199-9

21 i. Penal Code section 148(a)(1) (resist, obstruct, or delay a peace officer);
22 and Health and Safety Code section 11550(a) (under the influence of a controlled substance, to
23 wit: Methamphetamine). The circumstances of the crimes were that on or about
24 September 7, 1999, Respondent willfully and unlawfully resisted, delayed and obstructed a peace
25 officer in the discharge of and the attempt to discharge a duty of his/her office. Furthermore,
26 Respondent did unlawfully use and was under the influence of Methamphetamine.

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1 Case No. 04-116733-7

2 ii. Health and Safety Code section 11350(a) (possession of a controlled
3 substance, to wit: Cocaine). The circumstances of the crime was that on or about August 4, 1999,
4 Respondent unlawfully possessed Cocaine.

5 Case No. 04-119853-0

6 iii. Health and Safety Code section 11350(a) (possession of a controlled
7 substance, to wit: Cocaine). The circumstances of the crime were that on or about July 7, 1999,
8 Respondent unlawfully possessed Cocaine.

9 Case No. 04-116803-8

10 iv. Health and Safety Code section 11550(a) (under the influence of a
11 controlled substance, to wit: Cocaine). The circumstances of the crimes are that on or about
12 July 2, 1999, Respondent did unlawfully use and was under the influence of Cocaine.

13 f. On or about April 3, 1998, in the case of *People v. Tanya Marie Creal*,
14 (Super. Ct. Solano County, 1998, Case No. FC166582-M), Respondent was convicted by the
15 Court on her plea of no contest of violating Health and Safety Code section 11550(a) (under the
16 influence of a controlled substance, to wit: Stimulant). The circumstances of the crime are that
17 on or about March 14, 1998, Respondent did unlawfully use and was under the influence of a
18 Stimulant.

19 SECOND CAUSE FOR DISCIPLINE

20 (Conviction of Crimes Involving the Possession, Consumption,
21 and Self-Administration of Controlled Substances)

22 11. Respondent is subject to discipline under Code section 2878(a), on the
23 grounds of unprofessional conduct as defined by Code section 2878.5(c), in that between
24 April 3, 1998, and April 21, 2002, Respondent was convicted of crimes involving the possession,
25 consumption, and self-administration of controlled substances, as more particularly set forth
26 above in paragraph 10, subdivisions (b), (c), (e), and (f).

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1 THIRD CAUSE FOR DISCIPLINE

2 **(Possessed and Self-Administered Controlled Substances)**

3 12. Respondent is subject to discipline under Code section 2878(a), on the
4 grounds of unprofessional conduct as defined by Code section 2878.5(a), in that between
5 March 14, 1998, and April 12, 2002, while a licensed vocational nurse, Respondent did the
6 following:

7 a. Possessed Cocaine, a controlled substance, in violation of Code section
8 4060, in that she did not have a valid prescription therefor, as more particularly set forth above in
9 paragraph 10, subdivisions (b), and (e)(ii), and (e)(iii).

10 b. Self-administered Cocaine and Methamphetamine, controlled substances,
11 without lawful direction from a licensed physician and surgeon, dentist or podiatrist, as more
12 particularly set forth above in paragraph 10, subdivisions (c), (e)(i), (e)(iv), and (f).

13 FOURTH CAUSE FOR DISCIPLINE

14 **(Dishonest Acts)**

15 13. Respondent is subject to discipline under Code section 2878(j), in that
16 Respondent committed acts of dishonesty while a licensed vocational nurse, as set forth above in
17 paragraph 10, subdivision (d).

18 PRAYER

19 **WHEREFORE**, Complainant requests that a hearing be held on the matters
20 herein alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric
21 Technicians issue a decision:

22 1. Revoking or suspending Vocational Nurse License Number
23 VN 90115, issued to Tanya Marie Creal, also known as Tanya Marie Musgray and Tanya Marie
24 Lewis;

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1 2. Ordering Tanya Marie Creal, also known as Tanya Marie Musgray and
2 Tanya Marie Lewis, to pay the Board of Vocational Nursing and Psychiatric Technicians the
3 reasonable costs of the investigation and enforcement of this case, pursuant to Code section
4 125.3; and,

5 3. Taking such other and further action as deemed necessary and proper.

6 DATED: November 6, 2007.

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TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

14 SA2006102067
15 10/25/07 (kdg) Accusation
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